IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO.19114 of 2003

Between:

1.M/s. Nayagara Industries Ltd.,

(Presently Nayagara Technologies Ltd.,)

Regd Office,at No.8-4-378/29,Meter Factory Road,

Erragadda, Hyderabad - 500 018,

Represented by its Managing Director, Sri K.V. Reddy,

S/o. Sri K.V. Subba Reddy, R/o. Hyderabad.
2.Shri Rama Raju,

Ex-Managing Director of M/s. Nayagara Industries Ltd.,

(Presently Nayagara Technologies Ltd.)

Regd Office at No.8-4-378/29,

Erragadda, Hyderabad - 500 018,

Represented by its Managing Director,Sri K.V. Reddy,

S/o. Sri K.V. Subba Reddy, R/o. Hyderabad. **..... PETITIONERS**

AND

1.Assistant Director,

Enforcement Directorate, III Floor, Government of India,

Damayanti Chambers, Near New MLA Quarters, Ritz Hotel Road,

Adarsh Nagar, Hyderabad - 500 063.
2.The Deputy Director,Directorate of Enforcement,

Government of India, No. 9/1,State Bank of Road,

(Behind India Garage), Banglore - 560 001.
3.Chennai Port Trust, Chennai - 60 001.
4.Union of India,

Rep. by its Principal Secretary,Government of India,

Ministry of Law, Justice, Legislative Department,
New Delhi. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing the proceedings DD/43/BZ/HYD/2003/FERA/VS/2537 dated 09.07.2003 in File No. T-4/47-BZ/HYD/2002(DD-VS)- FERA imposing penalty of Rs.6, 00, 000/- (Rupees Six Lakhs Only) for non-submission of Bill of Entry and set aside the same as highly arbitrary, unjust, illegal and violative of Article 14, 16, 19(1) (g) and 21 of the Constitution of India and pass such other order.

Counsel for the Petitioners: MR.T.S.V.DIWAKAR

Counsel for the Respondent Nos.1, 2 & 4: MR.A.RAJASEKHAR REDDY, SR.STANDING COUNSEL FOR CENTRAL GOVT.

The Court made the following **ORDER: (PER SRI BN, J)**

Heard learned Counsel for the parties.

The order challenged in this writ petition is an appealable order. There are various questions of fact, which will have to be gone into in this matter. The petitioner had been provided foreign exchange for import of the machinery as early as in the year 1999. According to the petitioner, machinery was imported and is at shipyard, but could not be cleared, because the bank did not advance the balance amount to the petitioner. Considering these questions, the Deputy Director passed the impugned order, which reads thus:

> "I have perused the records submitted by them. I am unable to accept the various averments and explanations for their failure to submit the exchange control copy of the bill of entry. The averments of the company is that in addition to the original machinery they also imported some additional machinery by availing packing credit from the bank and since the bank refused to release the loan amount they could not get both the imported machineries released from Customs. The company has not produced any evidence to show why the loan amount was not released. They have also not produced any evidence to couple the original machinery with the additional accessories machinery. According to them because of non sanction of loan amount only, the additional machinery could not be cleared by them. It is therefore, very clear that the import of these two machineries took place independently at different times and therefore, they could have cleared the original machinery which was imported first and got the additional machinery subsequently. The conduct of the company in simply abandoning both the machineries with Chennai Port Trust is suspicious and unexplainable. The company also admitted that the original exchange control of bill of entry is also missing. The Ld.

representative who appeared for hearing also argued that since the import is complete the charge U/s 8(3) & 8(4) will not lie. This is incorrect. Section 8(3) & 8(4) of FERA' 1973 not only talks about import but also utilization of the foreign exchange for which the said money is released. In this case the foreign exchange was released for import of machinery for their use but instead of clearing it from Port Trust they have abandoned the goods with Chennai Port Trust. Therefore, it is very clear that the foreign exchange has not been utilized in the proper manner for the proper purpose. It is very clear that the company has not been dealing with this import in a diligent manner. In view of the overwhelming evidence on record that the exchange control copy has not been filed and the circumstances under which they have failed to clear the goods from Customs House and Port Trust, I hold M/s. Nayagara Industries Ltd., guilty of charge U/s 8(3) & 8(4) of FERA' 1973. It is seen from the record that Shri Rama Raju, was the Mg. Director and was incharge of the conduct of the business of the company. Therefore, in addition to finding the company guilty I also find Shri Rama Raju, guilty of the same contravention in terms of Section 68 of the said Act. Considering the various aspects, evidence and circumstances of the case and pursuant to powers given to me under section 50 of FERA' 1973, **I impose a consolidated penalty of Rs.6,00,000/- on M/s. Nayagara Industries Ltd., (Presently M/s. Nayagara Technologies Ltd.,) and on Shri Rama Raju, Mg. Director of the said company for the aforesaid contraventions.** The penalty is imposed on company and its Directors jointly and severally and shall be paid accordingly."

From bare perusal of the order itself, it is clear that many questions of fact would arise and which would need a decision that may not be possible for this Court in its writ jurisdiction. Particularly when an appeal is provided, the petitioner may file an appeal. The petitioner submits that before filing of appeal he has to deposit the whole penalty amount. That cannot be a reason for entertaining the writ petition, in the present factual position of the case.

Therefore, Writ Petition is dismissed. No costs.

(Bilal Nazki, J)

13th July, 2004

(P.S.Narayana, J)

LUR

To

1.The Assistant Director,

Enforcement Directorate,

III Floor, Government of India,

Damayanti Chambers,

Near New MLA Quarters, Ritz Hotel Road,

Adarsh Nagar, Hyderabad - 500 063.
2.The Deputy Director,

Directorate of Enforcement,

Government of India, No. 9/1,

State Bank of Road, (Behind India Garage),

Banglore - 560 001.
3.Chennai Port Trust,

Chennai - 600 001.
4.The Principal Secretary,

Union of India, Government of India,

Ministry of Law, Justice, Legislative Department,
New Delhi.

5.Two CD copies

-

-

-

-